

Essay

Don't Go to Court, Everybody Said

RUSSELL FULLER

Don't go to court, everybody said when I realized I must leave my spouse. "That's the last place you'll find justice." They were right, of course.

I just never had that choice. I am the father of three young children whom I love more than all the world. Being a dad is at once the most challenging, rewarding, and important thing I do. It's also the easiest. It's what I do best.

Our lives, though, have been repeatedly, dramatically, and permanently altered by the California family court. And not for the better. Despite all my best efforts, and those of others on my behalf, the state of California turned me into an absentee father and gave my ex-wife all the tools she needed to undermine my relationship with our children.

In family court, where our children's familial fate is decided in their name but absent their voices, their best interest should be our first priority. But that has not been the case for us. In this court, broken families should be able to find healing legal clarity on the ills that divide adversarial parents. But that has not been the case for us.

In family court my children and I have experienced the inequities of unequal representation, one-sided court-order enforcement, failed mediation, arbitrary arbitration, an emasculated special-master system, the judicial substitution of computer software for insightful judgment, and myopic interpretation of *In re Burgess* in a case that cried out for unconventional wisdom. In short, during the past decade, my children and I have seen their "best interest" subsumed in the twin insanities of "whatever the custodial parent wants" and "whatever justice one can pay for," regardless of the collective personal cost.

In 1984 I met a woman whom I divined would be the mother of my children. We lived on separate coasts. In 1986, knowing each other just a little, we married. These things happen. During eight and a half years of marriage, we had three amazing children. Pretty early on,

© 2003 Russell Fuller

however, beneath her smart, shiny surface, my spouse revealed herself to be angry, adolescent, and abusive—qualities that I hoped having a family would change. It didn't.

When the tension in the home became greater for our children than the benefit of my being there, I decided to leave. Don't go to court, everybody said, and I believed them. I bought books that would allow us to do the divorce ourselves, then set up a two-month window so we could enjoy a last Christmas together, talk with the kids, and allow them to process the information.

Instead, my wife imported her mother from Philadelphia for three weeks, refused to discuss our situation with the kids, and plotted. After her mother left, she announced that she was too heartbroken to watch me pack and would be taking the kids to the East Coast on the following day, returning after I'd moved out.

In truth, she'd removed her name from our credit cards and line of credit (after running it up to the max), cleaned out our joint checking account, and arranged to have papers served on me about 18 hours after she'd left. Once in the east, she would make enough ATM trips to extract the whole of my next paycheck before I got to it.

I realized she'd planned never to talk together to our children, intending instead to return home and "discover" that I'd "abandoned" the family. Two hours before they left, I gathered up the kids (ages 5, 3, and 1), took them to the apartment I'd be moving into, and assured them that we'd spend part of every week together and that I'd call them every night. It was best, though, that Mom and I no longer live together. Spencer, our oldest, seemed relieved. Rose tried to understand. Sarah, the baby, just wanted me to hold her.

The morning after my wife took our money and kids across the country, I was served with a motion that asked for a legal separation with primary custody, child support, and attorney fees. It also prohibited either spouse from spending communal monies or taking the kids out of state without permission of the other. I moved, leaving everything in the house except my personal belongings, so our kids wouldn't return to a half-empty home.

The first afternoon I wasted in family court came two weeks before the hearing. I couldn't afford a lawyer, so I left work for the afternoon, drove to the court, and stood in line for two hours to reach the help desk for folks representing themselves pro per. There I was given the address of a store where I could buy a proper set of forms. That was it.

At the hearing (January 15, 1995), there was no judicial recognition of my wife's considerable financial resources (which mostly flowed from her family—with no job, and later with unreported jobs, she always claimed zero income), nor any that I was forced to service our substantial mutual debt alone (or recognition that this debt even existed). My wife had vowed to destroy me, asserting that she'd begun "a war of attrition," one that I could never win. However unwittingly, family court could not have been more complicit.

My wife was awarded the inevitable (at first, temporary) primary physical custody and most of my salary in family support. I was ordered to take 32 tax deductions on withholding, to be made up with the children's exemptions, which would require her to sign a tax form in agreement. (Looking back, I'm still stunned by this ruling, which placed my financial solvency entirely in the hands of someone so adversarial, without any oversight whatsoever; the court should never make such a critical mistake.) After the first year, she simply refused to sign.

She was also awarded attorney fees, though I stood before the court unable to pay for even my own attorney and her paperwork showed a \$2,500 retainer put down by her brother. Because I was paying for her, I asked my wife's lawyer if she would help us both communicate enough to work out a permanent settlement. This was the funniest thing she'd ever heard. When she caught her breath, though, she assured me that "primary physical custody" was just a semantic nicety, that "joint legal custody" was what really mattered, and that my wife and I would sit down together to work out a formal parenting plan. Right.

Wrong. I'd just been conned out of asking for court-ordered mediation, and the court didn't suggest it. It would have made a world of difference, because my wife refused to ever co-write a parenting plan or attend any sort of mediation with me until the court ordered it some four and a half years later. Instead, she wielded physical custody like a weapon, manipulating the children and

extorting various behaviors and promises from me to be able to see or talk with our kids. (Eight years later, this behavior continues, refined and unabated.)

I filed for divorce. By then, I'd borrowed enough money to secure some services from an alleged attorney. Too little too late, though. He never filed a motion on my behalf beyond the divorce papers. All my money was spent in responding to opposing counsel's unending requests for paperwork and postponements (I did the work; his assistant typed it up on legal forms). In the summer, he missed a scheduled hearing, was fined by the court, knew I'd run out of funds, and simply fled after one more appearance—in arbitration.

Upon entering the family courthouse, before passing through the airport-level security check, one sees a printed sign that lists the weapons and such not allowed in the building—the usual suspects. On return visits, one begins to see handwritten additions such as “scissors.” Perhaps “sharpened pencils” is there by now. This building, where ex-lovers seek relief from or revenge on each other, is not a happy place. Ironically, when I was frequenting it, the basement prowled by the wounded, scarred, and crippled of the marriage wars was also where starry-eyed couples applied for marriage licenses. I think the chapel-bound have since been relocated to another, cheerier venue. I hope so.

Part of the worst day of my life took place in that basement, during arbitration, on November 13, 1995. Arbitration assured my financial ruin. In the hearing, I hoped to get credit for half our considerable personal property, have my almost-ex assume half our debt, secure a seek-work order for her, and obtain another by which she would have to commit to a written parenting plan and grievance mediation.

We had an hour. In a small, cold room choked with tension, I sat silently at a plain table with my steaming wife and her attorney. My mute counselor—who'd been slandered and mocked for months by opposing counsel and who planned to bail immediately after the hearing—fairly cowered in a chair he'd backed into a corner. For 15 minutes we sat and gulped the toxic air while our arbitrator hissed into the phone. Then he introduced himself, said we didn't have much time together, and only wanted to hear from the attorneys. My lawyer was unmoved.

Ten minutes later, I caught my wife's attorney in a blatant lie—saying she'd actually seen the home furnishings she described as nearly worthless "thrift-store trash" (including, I guess, the brand-new sofa, washing machine, and VCR/television I'd purchased before moving out). I pointed my finger and heatedly accused her of telling the same sorts of lies as her client. The arbitrator agreed, noting that she'd already said she hadn't been to the house, then threw me out of the hearing for my conduct. I felt nauseated and dizzy with disbelief.

Twenty minutes later I was asked to approve an agreement the others had signed off on, "wouldn't get any better, and wouldn't be on the table long." I felt coerced but believed the arbitrator. Besides, as he'd reminded, our time was up. I signed, then immediately regretted it, realizing I'd forfeited my chance to be heard by a judge, with or without counsel. I never again saw the arbitrator or either lawyer—these people who'd just rammed a nightmare future down my throat.

Tax-deductible family support was changed to alimony and child support (which was itself not reduced), of which only alimony was deductible. This in itself was devastating. I got very little credit (\$1,000 for about \$10,000 of communal property), and that took the form of a shortened alimony period. My spouse took almost no debt. I had been supporting two households on my salary, a court-ordered tax scheme, and a handful of credit cards. Now that house of cards collapsed.

Not long after my ex refused to follow the court order and sign the form allowing me to claim our kids as tax exemptions, my car was repossessed. Though I'd stopped using credit cards following arbitration, I was hounded daily at home and work by creditors, then collection agencies, then the IRS. I declared bankruptcy, losing the credit I'd worked for 25 years to build, but slipped further into the tax abyss with the state and IRS. Liens were filed.

I had secured an employment-efforts order. My ex was supposed to apply for jobs, go to interviews, perhaps attend classes to sharpen skills, and file reports with the court every other week. She ignored this entirely for almost four years. (When I brought this to the court's attention during her relocation effort in 1999, I was told for the first time, by anyone, that I had been responsible for enforcing this order. Because I had failed to file motions of contempt, the court considered the order irrelevant.) At the very first separation hearing, my paycheck had been immediately garnisheed

for child support, and I learned that if I missed three consecutive payments I could be jailed, among other penalties. The custodial parent, however dishonest, is apparently bound only by the honor system.

During the next few years my ex retained another attorney so she wouldn't have to respond to my ongoing requests for a parenting plan, employment-order compliance, and mediation. I had no funds to gather and document evidence on her unreported income, false tax returns, and so on.

I had all the kids every weekend and one weeknight, coached my son's soccer and baseball teams, and attended parent-participation preschool with first one daughter, then the other. My ex, however, regularly used the exchange points to loudly berate me, causing alarm at the preschool, public school, and after-care programs. When she refused mediation on this issue, I withdrew from mid-week visitation. Then, to spare us all, I eventually withdrew from the preschool and canceled the weeknight and morning drop-off at public school. We went along.

When the California Supreme Court decided *In Re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996), the coup of the custodial parent was complete.

In mid-1998, my ex demanded that I let her move the children to the East Coast, where her family and boyfriend lived. I refused. During all this time, she flew east about six times a year anyway (totaling about three months), both with and without the kids. In addition, her mother, brother, and boyfriend spent various lengths of time visiting California. She said she had a \$50,000 bankroll, more where that came from, and the lawyer who "wrote the book" on relocation. Her threat, though, proved empty until the following spring.

In March 1999, I was served with her motion to relocate. She asserted that, because of *Burgess*, I shouldn't waste everyone's time by opposing. The kids were devastated. The idea of leaving their father, friends, schools, teams, and all the places they'd known and loved all their lives was incomprehensible. I could promise only that I'd do everything I could to make their wishes known to the court and try to stop this insanity.

I began to read *Burgess* but threw it down in disgust when I saw that this decision affecting thousands of lives concerned a 40-mile, in-state, job-related move-away! I couldn't believe that this could be sensibly applied to a 3,000-mile move-away, which had nothing to do with employment and would remove our kids from one of the best school systems in the nation.

And for what? This woman who had refused to ever work or move to a cheaper home said she couldn't afford to live in California and wanted to be near her ill mother and family, whom she already visited several times a year. (Actually, she instead moved in with her boyfriend in New Jersey, informing our children two days before the move.)

Family and friends helped me raise enough money to retain a wonderfully wise and empathetic attorney. Except for hearings, we conducted our entire relationship by e-mail to keep costs down. Educators, coaches, relatives (including a sociologist), and longtime friends (including a child psychologist) submitted declarations on the harm that would be done to the children through this extreme relocation.

The court ordered us (finally) to attend mediation regarding the move, thus outraging my ex. She then frightened a very experienced mediator, who at first suggested several more sessions but soon surrendered. My ex was so ferociously unsupportive of my relationship with the kids that, when she got me alone, the mediator asked if I had a history of violence against the children and if in fact I'd been arrested for it, and that was why my wife left me. I explained that I was not the angry half of the equation and that it was I who filed for divorce. She sent us back to court.

In the spirit of cooperation, I offered to sponsor an evaluation by a court-appointed psychologist. All five of us were tested and interviewed over a period of a few weeks. The result was an 18-page report to the court, which stressed the overriding value of the children's having regular contact with both parents and recommended that they not be moved. The evaluating psychologist, however, knew the court was unlikely to ask the custodial parent such questions as, "Why won't you get a job?" "Why won't you move to a cheaper house and/or area nearby?" and "Why don't you want the kids'?

father to be part of their lives?" Thus, most of the report detailed exactly what the financial and, especially, custodial arrangements should be if the children were relocated.

Before *Burgess*, the custodial parent had to convince the court that moving the children would not significantly harm them. *Burgess* removed that obligation while still recognizing the idea of the children's best interest and shifted the burden to the noncustodial parent to show that harm would indeed occur. In his report (which my attorney called the most extensive she'd ever seen), the evaluating psychologist clearly stated that the contemplated move-away was not in the best interest of the children and was likely to cause them irreparable harm.

Still, the custodial parent no longer needed a reason to move. The only remaining check on her was the court's determination about whether she intended to frustrate the father's visitation and relationship with the children. One would hope that common sense would lead the court to presume that, by definition, a 3,000-mile move-away would certainly frustrate visitation and damage the children's relationship with their dad. That's what one would hope. Instead, the court asked the custodial parent. Case closed.

The decision was rendered on the new worst day of my life—August 10, 1999. Then the kids were packed up like property and hauled away, and an appallingly biased interpretation of the decision was submitted by my ex's attorney for our approval and the court's signature. After some prodding, they agreed to include the appointment (for three years) of a special master to help resolve disagreements that might (ahem) arise. The special master is an officer of the court who can write what amounts to court orders. In our case, we were fortunate to have the evaluating psychologist, who had gotten to know all of us, appointed to the position. Additionally, the language of his report—with respect to finances, custody, and so on—was incorporated into the order. Finally there would be some legitimate check on my ex's flouting of court orders and some remedy available, though his fees were, of course, quite high.

Once in Philadelphia (aka New Jersey), my ex was required to provide timely information on the kids' schools and teachers, teams and coaches, doctors and health insurance, and so on; send copies of school work, pictures, and report cards; start the kids in therapy for a prescribed length of time,

in consultation with the special master; purchase a computer, printer, and webcam so we could communicate with text and pictures over the Internet; set aside times for making and receiving calls; and send the children out to California once every three months, paying for every other trip. She ignored all these requirements.

It took several months of writing letters to my ex (who refused to speak on the phone) and the special master to get any information at all. There were a few sessions with the school counselor. No computer. The kids were seldom allowed to call, then not at all. So I made all the calls, often as many as four a day/night, as she continuously changed the acceptable times, allowed the service to answer (but wouldn't get a machine so the kids could hear my messages), said the kids couldn't come to the phone because they were playing, eating, showering, cleaning, doing homework, watching a video, getting ready for bed, or having a timeout. She gave them little privacy when they did talk and badgered them to get off after a few minutes, often leaving them in tears. Sarah, the youngest, finally just gave up. As for travel, the holidays became unavailable to me. Of six trips that the kids made to the West Coast, my ex paid for one.

The special master wrote several times, reminding my ex of the legal obligations she'd agreed to. When she ignored him, he wrote orders. During this time, however, the court unjudiciously (to me, unthinkably) removed the special master's power to write enforceable orders, that is, orders signed by the presiding judge. He was thus reduced to writing recommendations without the force of law. My ex ignored these, refused to pay him, and admitted she had no intention of facilitating my relationship with our children. Though the special master took a profound interest in our children and fulfilled his three-year appointment with care and compassion, no real benefit accrued to the kids.

After 18 months of this travesty, and still seeking to be the kind of father our children (any children) deserve, I left my home and friends of almost 35 years and moved across the country to a state I'd never even visited, to a town about 12 miles from the kids.

Though we all seem to agree that our children literally are the future, our national thinking about divorce, custody, and relocation ranges all over the proverbial map. Few states allow such a dramatic

relocation. Missouri allows no relocation over the legitimate objection of the noncustodial parent. Although this may make almost as little sense as the application of *Burgess* “to infinity and beyond,” the extremes indicate the depth of our confusion as well as the spectrum of current opinion, policy, and law. We can and must do better.

For my ex and her succession of high-powered attorneys, the experience of California family court was child’s play. For me and our kids, it was altogether different. The short-term consequences of having the fabric of our world violently ripped apart—the tears, heartache, profound anger, and acute depression—were enormous. The kids felt betrayed, bewildered, and tremendously sad. Though even these marrow-deep wounds can heal with time, ugly scars remain. And the long-term consequences of this relocation, and others like it, cannot now be fully imagined nor perhaps ever be truly measured. Across California, across the country, and stretching out into our communal future, there are thousands of parents like me and perhaps tens of thousands of children like mine.

I’ve now lived in New Jersey for two years, where my ex still mocks the California family court and special master, aggressively undermines my relationship with our kids, and has prevented me from spending any time at all with my youngest daughter. She is also threatening to move again. Thus, whenever I can marshal some more money, some more hope, and some sort of rationale, I’ll return again pro per to family court. And if it seems pointless to seek a remedy from an institution that to this point has not provided one, well, I simply have no other choice.